

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

WEDNESDAY, THE 9TH DAY OF DECEMBER 2015/18TH AGRAHAYANA, 1937

Crl.Rev.Pet.No. 759 of 2008 ()

AGAINST THE JUDGMENT IN CC 758/2004 of J.M.F.C.,NADAPURAM

REVISION PETITIONER(S)/DEFACTO COMPLAINANT:

**SAMEERA, D/O.KUNHAMMED, AGED 23 YEARS,
KUTTIPPURAM DESOM, KUTTIPPURAM AMSOM,
VADAKARA TALUK.**

BY ADV. SRI.GRASHIOUS KURIAKOSE

RESPONDENT(S)/ACCUSED & STATE:

**1. HASSAN, S/O.ABDULLA HAJI,
KOLLINUTHAZHE HOUSE, VALAYAM AMSOM, DESOM
VADAKARA TALUK.**

2. AYISHU, W/O.ABDULLA HAJI, DO. DO.

3. ASMA, D/O.ABDULLA HAJI, DO. DO.

**4. HASSAN HAJI, S/O.AHAMMED HAJI,
PUTHENPURAYIL HOUSE, VALAYAM AMSOM, DESOM
VADAKARA.**

5. KUNHIPATHU, W/O.HASSAN HAJI, DO. DO.

6. ISMAYIL, S/O.HASSAN HAJI, DO. DO.

**7. STATE - S.I. OF POLICE,
VALAYAM, REP. BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.**

**R1-R6 BY ADV. SRI.GEORGE THOMAS (MEVADA)(SR.)
BY ADV. SRI.MANU GEORGE KURUVILLA
BY ADV. SRI.AMAL GEORGE**

R7 BY PUBLIC PROSECUTOR SRI. DHANESH MATHEW MANJOORAN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 09-12-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

STK

P.D. RAJAN, J.

Crl.R.P.759 of 2008

Dated this the 9th of December 2015

ORDER

Revision petitioner, who is the defacto complainant in C.C.758/04 on the file of the Judicial First Class Magistrate, Nadapuram filed the complaint for having committed the offence punishable under Sections 498(A), 354, 406 and 420 IPC. The charge against the accused is that on 23.03.03, 1st accused married PW1 Sameera as per Muslim Customary Rights, thereafter they resided together at the matrimonial house. After 3 months, the first accused went abroad in connection with his employment, thereafter she was residing with A2 to A5. While residing so, they harassed and tortured her demanding more amount and gold ornaments. The 6th accused outraged her modesty during that period. The 1st accused misappropriated her gold ornaments received at the time of marriage for his personal use. In the circumstance, Valayam Police registered a crime

No.169/04 and after completing investigation, laid charge before the Judicial First Class Magistrate Court, Nadapuram.

2. The prosecution examined PW1 to PW12 and marked Exts.P1 to P6 as documentary evidence. Ext.D1 was marked from the side of the accused. The incriminating circumstances brought out in evidence were denied by the accused while questioning them. They did not adduce any evidence and the trial court acquitted the accused.

3. The learned counsel appearing for the revision petitioner contended that prosecution has successfully established their case beyond reasonable doubt and trial court made a wrong appreciation ignoring the vital piece of evidence. The revision petitioner made attempt of re-union with the first respondent and all attempts were failed which was forced to lodge the above case. But the counsel appearing for the respondents strongly resisted the above contention and contended that *prima facie* case is not made out against the accused and they were

acquitted by the trial court.

4. The object of conferring revisional power to the High Court is to correct grave miscarriage or failure of justice arising from erroneous or defective orders. While exercising this power, it is justified only to set right grave failure of justice and not merely to rectify every error. The fact that the lower court has taken a wrong view of law or misapprehended the evidence on record cannot be a reason to interfere unless it has resulted in grave miscarriage of justice. The revisional jurisdiction is supervisory jurisdiction to find out the illegality, irregularity in the order or sentence or proceedings of the Court below.

5. For ascertaining the illegality, I have examined the oral evidence and documentary evidence in this case. The specific case of PW1 was that, first accused married her on 23.03.03. At the time of marriage, 160 sovereigns of gold ornaments and Tayota Qualis car given to her. After 3 months, the first accused went abroad, thereafter she resided with the other accused in the matrimonial

house. While living so, they ill-treated her both physically and mentally. They assaulted her several times. They ill-treated her also. A4 demanded her to clean the house, A5 demanded her to wash the cloths and A6 attempted to outrage her modesty. She was forced to do all household work. One day, A2 pushed her and she fell down and sustained injury. They never gave sufficient food. In the year 2004 July, they demanded more amount and she entrusted her gold ornaments for purchase a property. A1 assaulted her and strangled and A2 supported that attack. While cross-examination, she admitted that the harassment started after one month of the marriage, but that was not stated in Ext.P1 statement. She admitted that this is her 3rd marriage and civil litigations are pending in the trial court. Even though she stated so, those facts were not disclosed in her statement to the police.

6. PW2, the father of the revision petitioner supported the evidence of PW1. He has only hearsay evidence with regard to the alleged cruelty. The evidence

of PW3 shows that he was conducting special duty in Valayam police station and as per direction of Circle Inspector, he registered the crime and Ext.P2 FIR. PW4 and PW8 attested Ext.P3 scene mahazar. PW5 & PW6 attested Ext.P4 seizure mahazar. PW7 deposed that the relatives of the first accused took the revision petitioner to her house. PW9 attested Ext.P5. PW10 deposed that he issued Ext.P6 certificate after solemnization of the marriage of the revision petitioner. PW11 was the Asst. Sub Inspector, who conducted the preliminary investigation. PW12 conducted investigation and laid charge before court. A close scrutiny of the above evidence, it is clear that the alleged overt-act by the respondents were not proved by the prosecution. There is also delay in reporting the matter which was also not explained by the prosecution.

7. The fundamental rule in a criminal case is that one person is presumed to be innocent till he is proved as guilty. This rule actually means that a person accused of a crime is not bound to make a statement or offer any

explanation about the circumstances which throws suspicion upon him. It is the duty of the prosecution to prove the guilt beyond reasonable doubt. There may be exception where the rules of presumption applies in certain cases. In such case, a statutory presumption with regard to the proved facts and circumstances may arise which will help in reaching a conclusion.

The trial court analysed the evidence and found that there was no materials available in the prosecution records for establishing the guilt of the accused beyond reasonable doubt. In such a situation, the accused were acquitted. I find no illegality in the above order and there is no merit in this revision petition and it is dismissed accordingly.

STK

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P.A. TO JUDGE

Sd/-
P.D. RAJAN,
JUDGE